IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 25829 of 2005(Y)

IA.7845/2004 OF I ADDL.M.C.,ERNAKULAM
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PETITIONER:

MICHEL LOUIS, S/O. PAUL LOUIS,
AGED 54 YEARS, CHERUPUNATHIL HOUSE,
PACHALAM, KOCHI-12.

BY ADV. SRI.ASOK M.CHERIAN
SRI.N.SATHEESH
SRI.K.R.VINOD
SRI.T.R.RENJITH

RESPONDENTS:
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1. K. AMBIKA, AGE NOT KNOWN,
W/O. LATE S.K. SIVADASAN PILLAI,
SHARATHU PARAMBIL, CHERANALLOOR VILLAGE,
CHITTOOR, ERNAKULAM.

2. DHANYA, D/O. LATE S.K. SIVADASAN PILLAI
AGED 18 YEARS, SHARATHU PARAMBIL,
CHERANALLOOR VILLAGE, CHITTOOR, ERNAKULAM.

3. DHANISH, S/O. LATE S.K. SIVADASAN PILLAI
AGED 14 YEARS, SHARATHU PARAMBIL, CHERANALLOOR VILLAGE, CHITTOOR, ERNAKULAM, REPRESENTED BY ITS MOTHER A. AMBIKA W/O LATE S.K. SIVADAS PILLAI
SHARATHU PARAMBIL, CHERANALLOOR VILLAGE,
CHITTOOR, ERNAKULAM.

4. THE TATA OIL MILLS WORKERS UNION,
REP. BY ITS SECRETARY, THAMPAN THOMAS,
AYYAPPANKAVU, ERNAKULAM.

R4 BY ADV. SRI.BIJI MATHEW
SMT.K.S.SABITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 25829/2005 Y

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE SAID PLAINT.

EXT.P2. COPY OF THE SAID IA NO. 7845/04.

EXT.P3. COPY OF THE ORDER DT. 28/08/05 OF THE LEARNED MUNSIFF IN IA NO. 7548/04.

True copy

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PIUS C. KURIAKOSE,J.

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W.P.(C) No.25829 of 2005

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Dated: 28th June, 2007

JUDGMENT

This Writ Petition is remaining defective for the reason that respondents 1 to 3 who are defendants in the suit have not been served. I am given to understand that the suit has been decreed against them. This being the position and in the nature of the order which is being passed in the Writ Petition, the issue involved in the Writ Petition can be decided even their absence.

2. An application for initiation of garnishee proceedings under Rule 46 A, B and C of Order XXI C.P.C. filed by the plaintiff is seen rejected by Ext.P3 order by the trial court only on the reason that garnishee proceedings are applicable only on the execution side. I am afraid that the learned Munsiff has erred seriously. Rule 11 A of Order XXXVIII of the Code clearly lays down that the provisions of the Code applicable to attachments made in execution of a decree shall, so far as could be, apply to attachments made before judgment and that such attachments will continue after the judgment, by virtue of the provisions to Rule 11. Rule 11 provides that where the property is under attachment by virtue of the provisions of Order XXXVIII and decree is subsequently passed in favour of the plaintiff, it will not be

necessary on an application for execution of such decree to apply for reattachment of the property. I would have set aside the impugned order and directed the court below to reconsider the application filed by the petitioner on the reason in view of Order XXXVIII Rule 11 and 11A. But, I am informed that the suit has now been decreed ex parte. Under these circumstances, setting aside the impugned order, I direct the court below to make over the application filed by the petitioner under Order XXI Rule 46 A, B & C to the execution court so that the execution court can deal with that application in accordance with law.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**